

INTERNAL REVENUE CODE  
\*\*\* CURRENT THROUGH P.L. 107-146, APPROVED 2/14/02 \*\*\*

SUBTITLE A. INCOME TAXES

CHAPTER 1. NORMAL TAXES AND SURTAXES

SUBCHAPTER D. DEFERRED COMPENSATION, ETC.

PART I. PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.

SUBPART A. GENERAL RULES.

IRC Sec. 403 (2002)

§ 403. Taxation of employee annuities.

(a) Taxability of beneficiary under a qualified annuity plan.

(1) Distributee taxable under section 72. If an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section), the amount actually distributed to any distributee under the contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities).

(2) Repealed.

(3) Self-employed individuals. For purposes of this subsection, the term "employee" includes an individual who is an employee within the meaning of section 401(c)(1), and the employer of such individual is the person treated as his employer under section 401(c)(4).

(4) Rollover amounts.

(A) General rule. If--

(i) any portion of the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him in an eligible rollover distribution (within the meaning of section 402(c)(4)),

(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan, and

(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) Certain rules made applicable. Rules similar to the rules of paragraphs (2) through (7) of section 402(c) shall apply for purposes of subparagraph (A).

(5) Direct trustee-to-trustee transfer. Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of such transfer.

(b) Taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school.

(1) General rule. If--

(A) an annuity contract is purchased--

(i) for an employee by an employer described in section 501(c)(3) which is exempt from tax under section 501(a),

(ii) for an employee (other than an employee described in clause (i)), who performs services for an educational organization described in section 170(b)(1)(A)(ii), by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing, or

(iii) for the minister described in section 414(e)(5)(A) by the minister or by an employer,

(B) such annuity contract is not subject to subsection (a),

(C) the employee's rights under the contract are nonforfeitable, except for failure to pay future premiums,

(D) except in the case of a contract purchased by a church, such contract is purchased under a plan which meets the nondiscrimination requirements of paragraph (12), and

(E) in the case of a contract purchased under a salary reduction agreement, the contract meets the requirements of section 401(a)(30),

then amounts contributed by such employer for such annuity contract on or after such rights become nonforfeitable shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such amounts does not exceed the applicable limit under section 415. The amount actually distributed to any distributee under such contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities). For purposes of applying the rules of this subsection to amounts contributed by an employer for a taxable year, amounts transferred to a contract described in this paragraph by reason of a rollover contribution described in paragraph (8) of this subsection or section 408(d)(3)(A)(ii) shall not be considered contributed by such employer.

(2) [Deleted]

(3) Includible compensation. For purposes of this subsection, the term "includible compensation" means, in the case of any employee, the amount of compensation which is received from the employer described in paragraph (1)(A), and which is includible in gross income (computed without regard to section 911) for the most recent period (ending not later than the close of the taxable year) which under paragraph (4) may be counted as one year of service. Such term does not include any amount contributed by the employer for any annuity contract to which this subsection applies or any amount received by a former employee after the fifth taxable year following the taxable year in which such employee was terminated. Such term includes--

(A) any elective deferral (as defined in section 402(g)(3)), and

(B) any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of section 125, 132(f)(4), or 457.

(4) Years of service. In determining the number of years of service for purposes of this subsection, there shall be included--

(A) one year for each full year during which the individual was a full-time employee of the organization purchasing the annuity for him, and

(B) a fraction of a year (determined in accordance with regulations prescribed by the Secretary) for each full year during which such individual was a part-time employee of such organization and for each part of a year during which such individual was a full-time or part-time employee of such organization.

In no case shall the number of years of service be less than one.

(5) Application to more than one annuity contract. If for any taxable year of the employee this subsection applies to 2 or more annuity contracts purchased by the employer, such contracts shall be treated as one contract.

(6) Forfeitable rights which become nonforfeitable. For purposes of this subsection and section 72(f) (relating to special rules for computing employees' contributions to annuity contracts), if rights of the employee under an annuity contract described in subparagraphs (A) and (B) of paragraph (1) change from forfeitable to nonforfeitable rights, then the amount (determined without regard to this subsection) includible in gross income by reason of such change shall be treated as an amount contributed by the employer for such annuity contract as of the time such rights become nonforfeitable.

(7) Custodial accounts for regulated investment company stock.

(A) Amounts paid treated as contributions. For purposes of this title, amounts paid by an employer described in paragraph (1)(A) to a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as amounts contributed by him for an annuity contract for his employee if--

(i) the amounts are to be invested in regulated investment company stock to be held in that custodial account, and

(ii) under the custodial account no such amounts may be paid or made available to any distributee before the employee dies, attains age 59 1/2, has a severance from employment, becomes disabled (within the meaning of section

72(m)(7)), or in the case of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(1)(D)), encounters financial hardship.

(B) Account treated as plan. For purposes of this title, a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as an organization described in section 401(a) solely for purposes of subchapter F and subtitle F with respect to amounts received by it (and income from investment thereof).

(C) Regulated investment company. For purposes of this paragraph, the term "regulated investment company" means a domestic corporation which is a regulated investment company within the meaning of section 851(a).

(8) Rollover amounts.

(A) General rule. If--

(i) any portion of the balance to the credit of an employee in an annuity contract described in paragraph (1) is paid to him in an eligible rollover distribution (within the meaning of section 402(c)(4)),

(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan described in section 402(c)(8)(B), and

(iii) in the case of a distribution of property other than money, the property so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) Certain rules made applicable. The rules of paragraphs (2) through (7) and (9) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A), except that section 402(f) shall be applied to the payor in lieu of the plan administrator.

(9) Retirement income accounts provided by churches, etc.

(A) Amounts paid treated as contributions. For purposes of this title--

(i) a retirement income account shall be treated as an annuity contract described in this subsection, and

(ii) amounts paid by an employer described in paragraph (1)(A) to a retirement income account shall be treated as amounts contributed by the employer for an annuity contract for the employee on whose behalf such account is maintained.

(B) Retirement income account. For purposes of this paragraph, the term "retirement income account" means a defined contribution program established or maintained by a church, a convention or association of churches, including an organization described in section 414(e)(3)(A), to provide benefits under section 403(b) for an employee described in paragraph (1) or his beneficiaries.

(10) Distribution requirements. Under regulations prescribed by the Secretary, this subsection shall not apply to any annuity contract (or to any custodial account described in paragraph (7) or retirement income account described in paragraph (9)) unless requirements similar to the requirements of sections 401(a)(9) and 401(a)(31) are met (and requirements similar to the incidental death benefit requirements of section 401(a) are met) with respect to such annuity contract (or custodial account or retirement income account). Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of the transfer.

(11) Requirement that distributions not begin before age 59 1/2, severance from employment, death, or disability. This subsection shall not apply to any annuity contract unless under such contract distributions attributable to contributions made pursuant to a salary reduction agreement (within the meaning of section 402(g)(3)(C)) may be paid only--

(A) when the employee attains age 59 1/2, has a severance from employment, dies, or becomes disabled (within the meaning of section 72(m)(7)), or

(B) in the case of hardship.

Such contract may not provide for the distribution of any income attributable to such contributions in the case of hardship.

(12) Nondiscrimination Requirements.

(A) In general. For purposes of paragraph (1)(D), a plan meets the nondiscrimination requirements of this paragraph if--

(i) with respect to contributions not made pursuant to a salary reduction agreement, such plan meets the requirements of paragraphs (4), (5), (17), and (26) of section 401(a), section 401(m), and section 410(b) in the same manner as if such plan were described in section 401(a), and

(ii) all employees of the organization may elect to have the employer make contributions of more than \$ 200 pursuant to a salary reduction agreement if any employee of the organization may elect to have the organization make contributions for such contracts pursuant to such agreement.

For purposes of clause (i), a contribution shall be treated as not made pursuant to a salary reduction agreement if under the agreement it is made pursuant to a 1-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement involving a one-time irrevocable election specified in regulations. For purposes of clause (ii), there may be excluded any employee who is a participant in an eligible deferred compensation plan (within the meaning of section 457) or a qualified cash or deferred arrangement of the organization or another annuity contract described in this subsection. Any nonresident alien described in section 410(b)(3)(C) may also be excluded. Subject to the conditions applicable under section 410(b)(4), there may be excluded for purposes of this subparagraph employees who are students performing services described in section 3121(b)(10) and employees who normally work less than 20 hours per week.

(B) Church. For purposes of paragraph (1)(D), the term "church" has the meaning given to such term by section 3121(w)(3)(A). Such term shall include any qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

(C) State and local governmental plans. For purposes of paragraph (1)(D), the requirements of subparagraph (A)(i) (other than those relating to section 401(a)(17)) shall not apply to a governmental plan (within the meaning of section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof).

(13) Trustee-to-trustee transfers to purchase permissive service credit. No amount shall be includible in gross income by reason of a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in section 414(d)) if such transfer is--

(A) for the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under such plan, or

(B) a repayment to which section 415 does not apply by reason of subsection (k)(3) thereof.

(c) Taxability of beneficiary under nonqualified annuities or under annuities purchased by exempt organizations. Premiums paid by an employer for an annuity contract which is not subject to subsection (a) shall be included in the gross income of the employee in accordance with section 83 (relating to property transferred in connection with performance of services), except that the value of such contract shall be substituted for the fair market value of the property for purposes of applying such section. The preceding sentence shall not apply to that portion of the premiums paid which is excluded from gross income under subsection (b). In the case of any portion of any contract which is attributable to premiums to which this subsection applies, the amount actually paid or made available under such contract to any beneficiary which is attributable to such premiums shall be taxable to the beneficiary (in the year in which so paid or made available) under section 72 (relating to annuities).

#### HISTORY; ANCILLARY LAWS AND DIRECTIVES

##### Prospective amendment:

Sunset of amendments made by Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16). Pursuant to § 901(a)(1), (b) of Act June 7, 2001, P.L. 107-16 (26 *USCS* § 1 note), the amendments made to this section by such Act shall not apply to taxable, plan, or limitation years beginning after December 31, 2010, and the Internal Revenue Code of 1986 shall be applied and administered to such years as if the amendments had never been enacted.

Amendments:

In 2001, P.L. 107-16, Sec. 632(a)(2) (applicable to years beginning after 12/31/2001, as provided by Sec. 632(a)(4) of P.L. 107-16, which appears as a note to Code Sec. 72), amended subsec. (b) by substituting "the applicable limit under section 415" for "the exclusion allowance for such taxable year" in para. (1), deleting para. (2), which read:

"(2) Exclusion allowance.

"(A) In general. For purposes of this subsection, the exclusion allowance for any employee for the taxable year is an amount equal to the excess, if any, of--

"(i) the amount determined by multiplying 20 percent of his includible compensation by the number of years of service, over

"(ii) the aggregate of the amounts contributed by the employer for annuity contracts and excludible from the gross income of the employee for any prior taxable year.

"(B) Election to have allowance determined under section 415 rules. In the case of an employee who makes an election under section 415(c)(4)(D) to have the provisions of section 415(c)(4)(C) (relating to special rule for section 403(b) contracts purchased by educational institutions, hospitals, home health service agencies, and certain churches, etc.) apply, the exclusion allowance for any such employee for the taxable year is the amount which could be contributed (under section 415 without regard to section 415(c)(8)[7] ) by his employer under a plan described in section 403(a) if the annuity contract for the benefit of such employee were treated as a defined contribution plan maintained by the employer.

"(C) Number of years of service for duly ordained, commissioned, or licensed ministers or lay employees. For purposes of this subsection and section 415(c)(4)(A)--

"(i) all years of service by--

"(I) a duly ordained, commissioned, or licensed minister of a church, or

"(II) a lay person,

as an employee of a church, a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii), shall be considered as years of service for 1 employer, and

"(ii) all amounts contributed for annuity contracts by each such church (or convention or association of churches) or such organization during such years for such minister or lay person shall be considered to have been contributed by 1 employer.

For purposes of the preceding sentence, the terms "church" and "convention or association of churches" have the same meaning as when used in section 414(e).

"(D) Alternative exclusion allowance.

"(i) In general. In the case of any individual described in subparagraph (C), the amount determined under subparagraph (A) shall not be less than the lesser of--

"(I) \$ 3,000, or

"(II) the includible compensation of such individual.

"(ii) Subparagraph not to apply to individuals with adjusted gross income over \$ 17,000. This subparagraph shall not apply with respect to any taxable year to any individual whose adjusted gross income for such taxable year (determined separately and without regard to any community property laws) exceeds \$ 17,000.

"(iii) Special rule for foreign missionaries. In the case of an individual described in subparagraph (C)(i) performing services outside the United States, there shall be included as includible compensation for any year under clause (i)(II) any amount contributed during such year by a church (or convention or association of churches) for an annuity contract with respect to such individual."

and inserting "or any amount received by a former employee after the fifth taxable year following the taxable year in which such employee was terminated" in the introductory matter of para. (3).

--P.L. 107-16, Sec. 641(b)(1), (e)(7) (applicable to distributions after 12/31/2001, as provided by Sec. 641(f)(1) of P.L. 107-16, which appears as a

note to Code Sec. 402), amended subsec. (b)(8) by substituting "such distribution to an eligible retirement plan described in section 402(c)(8)(B), and" for "such distribution to an individual retirement plan or to an annuity contract described in paragraph (1), and" in subpara. (A)(ii), and substituting subpara. (B) for one which read: "(B) Certain rules made applicable. Rules similar to the rules of paragraphs (2) through (7) of section 402(c) (including paragraph (4)(C) thereof) shall apply for purposes of subparagraph (A)).".

--P.L. 107-16, Sec. 642(b)(1) (applicable to distributions after 12/31/2001, as provided by Sec. 642(c)(1) of P.L. 107-16, which appears as a note to Code Sec. 408), amended subsec. (b)(1) by substituting "section 408(d)(3)(A)(ii)" for "section 408(d)(3)(A)(iii)" in the concluding matter.

--P.L. 107-16, Sec. 646(a)(2) (applicable to distributions after 12/31/2001, as provided by Sec. 646(b) of P.L. 107-16, which appears as a note to Code Sec. 401), amended subsec. (b) by substituting "has a severance from employment" for "separates from service" in para. (7)(a)(ii), substituting "severance from employment" for "separation from service" in the heading of para. (11), and substituting "has a severance from employment" for "separates from service" in para. (11)(A).

--P.L. 107-16, Sec. 647(a) (applicable to trustee-to-trustee transfers after 12/31/2001, as provided by Sec. 647(c) of P.L. 107-16, which appears as a note to this section), amended subsec. (b) by adding para. (13).

In 2000, P.L. 106-554, Sec. 1(a)(7) (enacting into law Sec. 314(a) of Subtitle B of Title III of H.R. 5662, as introduced on Dec. 14, 2000 (effective as if included in the provisions of P.L. 105-34 to which it relates, as provided by Sec. 314(g) of such H.R. 5662, which appears as a note to Code Sec. 56)), amended subsec. (b)(3)(B) by substituting "section 125, 132(f)(4), or" for "section 125 or".

In 1998, P.L. 105-206, Sec. 6005(c)(2)(B) (applicable to distributions after 12/31/98, as provided by Sec. 6005(c)(2)(C) of P.L. 105-206, which appears as a note to Code Sec. 402), amended subsec. (b)(8)(B) by inserting "(including paragraph (4)(C) thereof)".

In 1997, P.L. 105-34, Sec. 1504(a)(1) (applicable to years beginning after 12/31/97, as provided by Sec. 1504(a)(2), which appears as a note to this section), amended subsec. (b)(3) by adding the sentence beginning "Such term includes--", including subparas. (A) and (B).

--P.L. 105-34, Sec. 1505(c) (applicable to taxable years beginning on or after 8/5/97, pursuant to Sec. 1505(d), which appears as a note to Code Sec. 401), amended subsec. (b)(12) by adding subpara. (C).

--P.L. 105-34, Sec. 1601(d)(6)(B) (effective as if included in the provisions of P.L. 104-188 to it relates, as provided by Sec. 1601(j)(1), which appears as a note to Code Sec. 23), amended subsec. (b)(1)(A) by deleting "or" after the concluding comma in cl. (i), adding "or" after the concluding comma in cl. (ii), and adding cl. (iii).

In 1996, P.L. 104-188, Sec. 1450(c)(1) (applicable as provided by Sec. 1450(c)(2), which appears as a note to this section), substituted subsec. (b)(1)(E) for one which read: "(E) in the case of a contract purchased under a plan which provides a salary reduction agreement, the plan meets the requirements of section 401(a)(30),".

--P.L. 104-188, Sec. 1704(t)(69), substituted "a direct" for "an direct" in subsec. (b)(10).

In 1992, P.L. 102-318, Sec. 521(b)(12)(A), added "in an eligible rollover distribution (within the meaning of section 402(c)(4))" before the comma at the end of clause (a)(4)(A)(i) . . . Sec. 521(b)(12)(B), amended subpara. (a)(4)(B) . . . Sec. 521(b)(13)(A), added "in an eligible rollover distribution (within the meaning of section 402(c)(4))" before the comma at the end of clause (b)(8)(A)(i) . . . Sec. 521(b)(13)(B), deleted subparas. (b)(8)(B), (C) and (D) and added new subpara. (b)(8)(B), effective for distributions after 12/31/92. For special rule, see Sec. 521(e)(2) of this Act which reads as follows:

"(2) Special rule for partial distributions. For purposes of section 402(a)(5)(D)(i)(II) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this section), a distribution before January 1, 1993, which is made before or at the same time as a series of periodic payments shall not be treated as one of such series if it is not substantially equal in amount to other payments in such series."

Prior to amendment, subpara. (a)(4)(B) read as follows:

"(B) Certain rules made applicable. Rules similar to the rules of subparagraphs (B) through (G) of section 402(a)(5) and of paragraphs (6) and (7) of section 402(a) shall apply for purposes of subparagraph (A)."

Prior to deletion, subparas. (b)(8)(B), (C) and (D) read as follows:

"(B) Special rules for partial distributions.

"(i) In general. In the case of any distribution other than a total distribution, rules similar to the rules of clauses (i) and (ii) of section 402(a)(5)(D) shall apply.

"(ii) Total distribution. For purposes of subparagraph (A), the term "total distribution" means one or more distributions from an annuity contract described in paragraph (1) which would constitute a lump-sum distribution within the meaning of section 402(e)(4)(A) (determined without regard to subparagraphs (B) and (H) of section 402(e)(4)) if such annuity contract were described in subsection (a), or 1 or more distributions of accumulated deductible employee contributions (within the meaning of section 72(o)(5)).

"(C) Certain rules made applicable. Rules similar to the rules of subparagraphs (B), (C), and (F)(i) of section 402(a)(5) and of paragraphs (6) and (7) of section 402(a) shall apply for purposes of subparagraph (A).

"(D) Required distributions not eligible for rollover treatment. Subparagraph (A) shall not apply to any distribution to the extent such distribution is required under paragraph (10)."

--P.L. 102-318, Sec. 522(a)(3), substituted "sections 401(a)(9) and 401(a)(31)" for "section 401(a)(9)" in para. (b)(10). . . Sec. 522(c)(2), added para. (a)(5). . . Sec. 522(c)(3), added a new sentence at the end of para. (b)(10), effective for distributions after 12/31/92, except as provided in Sec. 522(d)(2) of this Act which reads as follows:

"(2) Transition rule for certain annuity contracts. If, as of July 1, 1992, a State law prohibits a direct trustee-to-trustee transfer from an annuity contract described in section 403(b) of the Internal Revenue Code of 1986 which was purchased for an employee by an employer which is a State or a political subdivision thereof (or an agency or instrumentality of any 1 or more of either), the amendments made by this section shall not apply to distributions before the earlier of--

"(A) 90 days after the first day after July 1, 1992, on which such transfer is allowed under State law, or

"(B) January 1, 1994."

In 1990, P.L. 101-508, Sec. 11701(k), added "involving a one-time irrevocable election" after "similar arrangement" in second sentence of subpara. (b)(12)(A), effective for tax. yrs. begin. after 12/31/86, except as provided in Sec. 1105(c)(2) and (5) of P.L. 99-514, reproduced in note following Code Sec. 402.

In 1988, P.L. 100-647, Sec. 1011(c)(7)(B), deleted "and" at the end of subpara. (b)(1)(C), added "and" at the end of subpara. (b)(1)(D), and added subpara. (b)(1)(E), effective for plan yrs. begin. after 12/31/87, Sec. 1011(c)(7)(E)(ii) of this Act provides:

"(ii) In the case of a plan described in section 1105(c)(2) of the Reform Act, the amendments made by this paragraph shall not apply to contributions made pursuant to an agreement described in such section for plan years beginning before the earlier of--

"(I) the later of January 1, 1988, or the date on which the last of such agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

"(II) January 1, 1989."

--P.L. 100-647, Sec. 1011(c)(12), added "For purposes of clause (i), a contribution shall be treated as not made pursuant to a salary reduction agreement if under the agreement it is made pursuant to a 1-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement specified in regulations." after clause (b)(12)(A)(ii) [as redesignated by Sec. 1011(m)(1)(A), of this Act], effective for tax. yrs. begin. after 12/31/86, except as provided in Secs. 1105(c)(2) and (5) of P.L. 99-514, reproduced in note following Code Sec. 402.

--P.L. 100-647, see Sec. 1011(h)(9) of this Act reproduced in note following Code Sec. 4980.

--P.L. 100-647, Sec. 1011(m)(1)(A), redesignated para. (b)(10) as added by Sec. 1120(b) of P.L. 99-514, as para. (b)(12) . . . Sec. 1011(m)(1)(B), substituted "paragraph (12)" for "paragraph (10)" in subpara. (b)(1)(D) . . . Sec. 1011(m)(2)(A), added "(17)" after "(5)", in clause (b)(12)(A)(i) . . . Sec. 1011(m)(2)(B), added ", section 401(m)," after "section 401(a)" the first place it appeared in clause (b)(12)(A)(i), effective for tax. yrs. begin. after 12/31/88.

--P.L. 100-647, Sec. 1011(m)(3), added Sec. 1120(c)(2) of P.L. 99-514 [reproduced below], part of the effective date for changes made by Sec. 1120 of P.L. 99-514, see below.

--P.L. 100-647, Sec. 1011A(c)(11)(A), amended Sec. 1123(e)(2) of P.L. 99-514, part of the effective date for changes made by Sec. 1123(c) of P.L. 99-514, see below.

Prior to amendment, Sec. 1123(e)(2) of P.L. 99-514 read as follows:

"(2) Subsection (c).--The amendments made by subsection (c) shall apply to taxable years beginning after December 31, 1988."

--P.L. 100-647, Sec. 6052(a)(1), amended the last sentence of subpara. (b)(12)(A), effective for tax. yrs. begin after 12/31/88, except as provided in Sec. 1120(c)(2) of P.L. 99-514, reproduced below.

Prior to amendment, the last sentence of subpara. (b)(12)(A) read as follows:

"For purposes of this subparagraph, students who normally work less than 20 hours per week may (subject to the conditions applicable under section 410(b)(4)) be excluded."

--P.L. 100-647, Sec. 6052(b)(1), and (2) of this Act provide:

"(b) Sampling. In the case of plan years beginning in 1989, 1990, or 1991, determinations as to whether a plan meets the requirements of section 403(b)(12) of the 1986 Code may be made on the basis of a statistically valid random sample. The preceding sentence shall apply only if--

"(1) the sampling is conducted by an independent person in a manner not inconsistent with regulations prescribed by the Secretary, and

"(2) the statistical method and sample size result in a 95 percent probability that the results will have a margin of error not greater than 3 percent."

In 1986, P.L. 99-514, Sec. 1120(a), deleted "and" at the end of subpara. (b)(1)(B), added "and" to the end of subpara. (b)(1)(C), and added subpara. (b)(1)(D) . . . Sec. 1120(b), added para. (b)(10), effective for yrs. begin. after 12/31/88, Sec. 1120(c)(2) of this Act [as added by P.L. 100-647, Sec. 1011(m)(3), see above] provides:

"(2) Collective bargaining agreements. In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to plan years beginning before the earlier of--

"(A) January 1, 1991, or

"(B) the later of--

"(i) January 1, 1989, or

"(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986)."

--P.L. 99-514, Sec. 1122(b)(1)(B), deleted para. (a)(2), effective for amounts distributed after 12/31/86, in tax. yrs. end. after 12/31/86. For special and transitional rules see Sec. 1123(h)(3)-(6) reproduced in note following Code Sec. 402.

Prior to deletion, para. (a)(2) read as follows:

"(2) Capital gains treatment for certain distributions.

"(A) General rule. If--

"(i) an annuity contract is purchased by an employer for an employee under a plan described in paragraph (1);

"(ii) such plan requires that refunds of contributions with respect to annuity contracts purchased under such plan be used to reduce subsequent premiums on the contracts under the plan; and

"(iii) a lump sum distribution (as defined in section 402(e)(4)(A)) is paid to the recipient,



so much of the total taxable amount (as defined in section 402(e)(4)(D)) of such distribution as is equal to the product of such total taxable amount multiplied by the fraction described in section 402(a)(2) shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under subsection (e)(4)(B) of section 402, but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph.

"(B) Cross reference. For imposition of separate tax on ordinary income portion of lump sum distribution, see section 402(e)."

--P.L. 99-514, Sec. 1122(d)(1), amended para. (a)(1) . . . Sec. 1122(d)(2), amended the second sentence of para. (b)(1) . . . Sec. 1122(d)(3), amended the last sentence of subsec. (c), effective for tax. yrs. begin. after 12/31/85.

Prior to amendment, para. (a)(1) read as follows:

"(1) General rule. Except as provided in paragraph (2), if an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section), the employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities)."

Prior to amendment, the second sentence of para. (b)(1) read as follows:

"The employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities)."

Prior to amendment, the last sentence of subsec. (c) read as follows:

"The amount actually paid or made available to any beneficiary under such contract shall be taxable to him in the year in which so paid or made available under section 72 (relating to annuities)."

--P.L. 99-514, Sec. 1123(c)(1), added para. (b)(11) [sic, (b)(12)] . . . Sec. 1123(c)(2), added "in the case of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(1)(D))," before "encounters" in clause (b)(7)(ii) [sic, (b)(7)(A)(ii)]. Sec. 1123(e)(2) of this Act [as amended by Secs. 1011A(c)(11)(A) and (B) of P.L. 100-647, see above] provides:

"(2) Subsection (c).--The amendments made by subsection (c) shall apply to years beginning after December 31, 1988, but only with respect to distributions from contracts described in section 403(b) of the Internal Revenue Code of 1986 which are attributable to assets other than assets held as of the close of the last year beginning before January 1, 1989."

--P.L. 99-514, Sec. 1852(a)(3)(A), added para. (b)(10) . . . Sec. 1852(a)(3)(B), deleted subpara. (b)(7)(D), effective for benefits accruing after 12/31/86, in tax. yrs. end. after 12/31/86.

Prior to deletion, subpara. (b)(7)(D) read as follows:

"(D) Distribution requirements. For purposes of determining when the interest of an employee in a custodial account must be distributed, such account shall be treated in the same manner as an annuity contract."

--P.L. 99-514, Sec. 1852(a)(5)(B)(i), substituted "through (G)" for "through (F)" in subpara. (a)(4)(B) . . . Sec. 1852(a)(5)(B)(ii), added subpara. (b)(8)(D), effective for yrs. begin. after 12/31/84. For transitional and special rules, see Sec. 521(e)(3)-(5) of P.L. 98-369 reproduced in note following Code Sec. 408.

--P.L. 99-514, Sec. 1852(b)(10), substituted "and (F)(i)" for "(F)(i)" in subpara. (b)(8)(C), effective for distributions made after 7/18/84, in tax. yrs. end. after 7/18/84.

In 1984, P.L. 98-369, Sec. 491(d)(12), deleted "or 409(b)(3)(C)" after "or section 408(d)(3)(A)(iii)" at the end of para. (b)(1), effective for obligations issued after 12/31/83.

--P.L. 98-369, Sec. 521(c), added subpara. (b)(7)(D), effective for yrs. begin. after 12/31/84. For transitional and special rules, see Secs. 521(e)(3)-(5) of this Act reproduced in note following Code Sec. 408.

--P.L. 98-369, Sec. 522(a)(2), amended clause (a)(4)(A)(i) . . . Sec. 522(a)(3), amended clause (b)(8)(A)(i) . . . Sec. 522(d)(9), substituted "B

through F" for "B through E" in subpara. (a)(4)(B) . . . Sec. 522(d)(10), amended subpara. (b)(8)(B) . . . Sec. 522(d)(11), substituted "F(i)" for "D(v) and E(i)" in subpara. (b)(8)(C), effective for distributions made after 7/18/84, in tax. yrs. end. after 7/18/84.

Prior to amendment, clause (a)(4)(A)(i) read as follows:

"(i) the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him in a qualifying rollover distribution."

Prior to amendment, clause (b)(8)(A)(i) read as follows:

"(i) the balance to the credit of an employee is paid to him in a qualifying distribution,"

Prior to amendment, subpara. (b)(8)(B) read as follows:

"(B) Qualifying distribution defined.

"(i) In general. For purposes of subparagraph (A), the term "qualifying distribution" means 1 or more distributions from an annuity contract described in paragraph (1) which would constitute a lump sum distribution within the meaning of section 402(e)(4)(A) (determined without regard to subparagraphs (B) and (H) of section 402(e)(4)) if such annuity contract were described in subsection (a), or 1 or more distributions of accumulated deductible employee contributions (within the meaning of section 72(o)(5)).

"(ii) Aggregation of annuity contracts. For purposes of this paragraph, all annuity contracts described in paragraph (1) purchased by an employer shall be treated as a single contract, and section 402(e)(4)(C) shall not apply."

--P.L. 98-369, Sec. 1001(b)(4), substituted "6 months" for "1 year" each place it appeared in subpara. (a)(2)(A), effective for property acquired after 6/22/84, and before 1/1/88.

In 1983, P.L. 98-21, Sec. 122(c)(4), substituted "section 911" for "sections 105(d) and 911" in para. (b)(3), effective for tax. yrs. begin. after 12/31/83.

--P.L. 97-448, Sec. 103(c)(8)(B), substituted "subparagraphs (B), (C), (D)(v)" for "subparagraphs (B), (C)" in subpara. (b)(8)(C), effective for tax. yrs. begin. after 12/31/81.

In 1982, P.L. 97-248, Sec. 251(a)(1), substituted "(under section 415 without regard to section 415(c)(8))" for "(under section 415)" in subpara. (b)(2)(B) . . . Sec. 251(a)(2), added subparas. (b)(2)(C) and (D), effective for tax. yrs. begin. after 12/31/81.

--P.L. 97-248, Sec. 251(b), added para. (b)(9), effective for tax. yrs. begin. after 12/31/74.

--P.L. 97-248, Sec. 251(c)(3), substituted "home health service agencies, and certain churches, etc." for "and home health service agencies" in subpara. (b)(2)(B), effective for yrs. begin. after 12/31/81.

--P.L. 97-248, Sec. 251(d), provides as follows:

"(d) Correction period for church plans.--A church plan (within the meaning of section 414(e) of the Internal Revenue Code of 1954) shall not be treated as not meeting the requirements of section 401 or 403 of such Code if--

"(1) by reason of any change in any law, regulation, ruling, or otherwise such plan is required to be amended to meet such requirements, and

"(2) such plan is so amended at the next earliest church convention or such other time as the Secretary of the Treasury or his delegate may prescribe."

--P.L. 97-248, Sec. 251(e)(5), provides:

"Any defined benefit arrangement which is established by a church or a convention or association of churches (including an organization described in section 414(e)(3)(B)(ii) of the Internal Revenue Code of 1954) and which is in effect on the date of the enactment of this Act shall not be treated as failing to meet the requirements of section 403(b)(2) of such Code merely because it is a defined benefit arrangement."

In 1981, P.L. 97-34, Sec. 311(b)(3)(B), added ", or 1 or more distributions of accumulated deductible employee contributions (within the meaning of section 72(o)(5))" after "subsection (a)" in clause (b)(8)(B)(i), effective for tax. yrs. begin. after 12/31/81. For transitional rule see Sec. 311(i)(2) of this Act reproduced in note following Code Sec. 219.

In 1980, P.L. 96-613, Sec. 1, provides:

"Section 1. Annuity contracts purchased by the Uniformed Services University of the Health Sciences.

"(a) In general.

"An annuity contract purchased by the Uniformed Services University of the Health Sciences for any employee who is a member of the civilian faculty or staff of such university shall, for purposes of section 403(b) of the Internal Revenue Code of 1954, be treated as an annuity contract purchased for an employee by an employer described in section 501(c)(3) of such Code which is exempt from tax under section 501(a) of such Code.

"(b) Effective date.

"Subsection (a) shall apply to service after December 31, 1979, in taxable years ending after such date."

--P.L. 96-222, Sec. 101(a)(13)(A), amended Sec. 156(d) of P.L. 95-600, the effective date for amendments made by Sec. 156(a) and (b) of P.L. 95-600, so that the amendments are effective for distributions or transfers made after 12/31/77, in tax yrs. begin. after 12/31/77 rather than effective for distributions or transfers made after 12/31/78 in tax yrs. begin. after 12/31/77, see below. Sec. 101(a)(13)(B) of P.L. 96-222 provides:

"(B) Transitional rule for making section 403(b)(8) rollover in the case of payments during 1978. In the case of any payment made during 1978 in a qualifying distribution described in section 403(b)(8) of the Internal Revenue Code of 1954, the applicable period specified in section 402(a)(5)(C) of such Code shall not expire before the close of December 31, 1980."

--P.L. 96-222, Sec. 101(a)(12), substituted "which satisfies" for "which satisfied" in subpara. (b)(7)(A), effective for tax. yrs. begin. after 12/31/78.

--P.L. 96-222, Sec. 101(a)(13)(C), substituted "409(b)(3)(C)" for "409(d)(3)(C) in para. (b)(1), effective for distributions or transfers made after 12/31/77, in tax. yrs. begin. after 12/31/77.

In 1978, P.L. 95-600, Sec. 154(a), amended subpara. (b)(7)(A), effective for tax. yrs. begin. after 12/31/78.

Prior to amendment, subpara. (b)(7)(A) read as follows:

"(A) Amounts paid treated as contributions. For purposes of this title, amounts paid by an employer described in paragraph (1)(A) to a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as amounts contributed by him for an annuity contract for his employee if the amounts are paid to provide a retirement benefit for that employee and are to be invested in regulated investment company stock to be held in that custodial account."

--P.L. 95-600, Sec. 156(a)(1), added para. (b)(8) . . . Sec. 156(b), added the last sentence in para. (b)(1), effective [as amended by Sec. 101(a)(13)(A) of P.L. 96-222, see above] for distributions or transfers made after 12/31/77, in tax. yrs. begin. after 12/31/77.

--P.L. 95-600, Sec. 157(g)(2), substituted 'paragraphs (6) and (7)' for 'paragraph (6)' in subpara. (a)(4)(B), effective for lump-sum distributions completed after 12/31/78, in tax. yrs. end. after 12/31/78.

--P.L. 95-458, Sec. 4(b), deleted paras. (a)(4) and (a)(5) and added new para. (a)(4), effective for tax. yrs. begin. after 12/31/74. Sec. 4(d)(2) of the Act provides as follows:

"(2) Validation of certain attempted rollovers. If the taxpayer--

"(A) attempted to comply with the requirements of section 402(a)(5) or 403(a)(4) of the Internal Revenue Code of 1954 for a taxable year beginning before the date of the enactment of this Act, and

"(B) failed to meet the requirements of such section that all property received in the distribution be transferred,

such section (as amended by this section) shall be applied by treating any transfer of property made on or before December 31, 1978, as if it were made on or before the 60th day after the day on which the taxpayer received such property. For purposes of the preceding sentence, a transfer of money shall be treated as transfer of property received in a distribution to the extent that the amount of the money transferred does not exceed the highest fair market value of the property distributed during the 60-day period beginning on the date on which the taxpayer received such property."

Prior to amendment, paras. (a)(4) and (a)(5) read as follows:

"(4) Rollover amounts. In the case of an employee annuity described in 403(a), if--

"(A) the balance to the credit of an employee is paid to him--

"(i) within one taxable year of the employee on account of a termination of the plan of which such trust is a part or, in the case of a profit-sharing plan, a complete discontinuance of contributions under such plan, or

"(ii) in one or more distributions which constitutes a lump-sum distribution within the meaning of section 402(e)(4)(A) (determined without reference to section 402(e)(4)(B)).

"(B)

(i) the employee transfers all the property he receives in such distribution to an individual account described in section 408(a) an individual retirement annuity described in section 408(b) (other than an endowment contract), or a retirement bond described in section 409, on or before the 60th day after the day on which he received such property to the extent the fair market value of such property exceeds the amount referred to in section 402(e)(4)(D)(i), or

"(ii) the employee transfers all the property he receives in such distribution to an employees' trust described in section 401(a) which is exempt from tax under section 501(a), or to an annuity plan described in subsection (a) on or before the 60th day after the day on which he received such property to the extent the fair market value of such property exceeds the amount referred to in section 402(e)(4)(D)(i), and

"(C) the amount so transferred consists of the property distributed to the extent that the fair market value of such property does not exceed the amount required to be transferred pursuant to subparagraph (B),

then such distribution is not includible in gross income for the year in which paid. For purposes of this title, a transfer described in subparagraph (B)(i) shall be treated as a rollover contribution described in section 408(d)(3). Subparagraph (B)(ii) does not apply in the case of a transfer to an employees' trust, or annuity plan if any part of a payment described in subparagraph (A) is attributable to an annuity plan under which the employee was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan.

"(5) Special rollover rules. For purposes of paragraph (4)(A)(i)--

"(A) Time of termination. A complete discontinuance of contributions under a profit-sharing plan shall be deemed to occur on the day the plan administrator notifies the Secretary or his delegate (in accordance with regulations prescribed by the Secretary) that all contributions to the plan have been completely discontinued. For purposes of section 411(d)(3), the plan shall be considered to be terminated no later than the day such notice is filed with the Secretary.

"(B) Sale of subsidiary or assets.--

"(i) A payment of the balance to the credit of an employee of a corporation (hereinafter referred to as the employer corporation) which is a subsidiary corporation (within the meaning of section 425(f) or which is a member of a controlled group of corporations (within the meaning of section 1563(a), determined by substituting '50 percent' for '80 percent' each place it appears therein) in connection with the liquidation, sale, or other means of terminating the parent-subsidiary or controlled group relationship of the employer corporation with the parent corporation or controlled group, or

"(ii) A payment of the balance to the credit of an employee of a corporation (hereinafter referred to as the acquiring corporation) in connection with the sale or other transfer to the acquiring corporation of all or substantially all of the assets used by the previous employer of the employee (hereinafter referred to as the selling corporation) in a trade or business conducted by the selling corporation,

shall be treated as a payment or distribution on account of the termination of the plan with respect to such employee if the employees of the employer corporation or the acquiring corporation (whichever applies) are not active participants in such plan at the time of such payment or distribution. For purposes of this subparagraph, in no event shall a payment or distribution be deemed to be in accordance with a sale or other transfer of assets, or a liquidation, sale, or other means of terminating such parent-subsidiary or controlled group relationship, if such payment or distribution is made later than the end of the second calendar year after the calendar year in which occurs

such sale or other transfer of assets, or such liquidation, sale, or other means of terminating such parent-subsidiary or controlled group relationship."

In 1976, P.L. 94-455, Sec. 1402(b)(1)(D), substituted '9 months' for '6 months' in subpara. (a)(2)(A), effective for tax. yrs. begin. in 1977.

--P.L. 94-455, Sec. 1402(b)(2), substituted '1 year' for '9 months' each place it appeared in subpara. (a)(2)(A), effective for tax. yrs. begin. after 12/31/77.

--P.L. 94-455, Sec. 1504(a), deleted ', and which issues only redeemable stock' from the end of the last sentence of subpara. (b)(7)(C), effective for tax. yrs. begin. after 12/31/75.

--P.L. 94-455, Sec. 1901(a)(58), amended the last two sentences of para. (a)(4), effective for tax. yrs. begin. after '76.

Prior to amendment, the last two sentences of para. (a)(4) read as follows:

"For purposes of this title, a transfer described in subparagraph (B)(i) shall be treated as a rollover contribution described in section 408(d)(3).

"Subparagraph (B)(ii) does not apply in the case of a transfer to an employees' trust, or annuity plan if any part of a payment described in subparagraph (A) is attributable to an annuity plan under which the employee was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan."

--P.L. 94-455, Sec. 1901(b)(8)(A), substituted 'educational organization described in section 170(b)(2)(A)(ii)' for 'educational institution (as defined in section 151(e)(4))' in clause (b)(1)(A)(ii), effective for tax. yrs. begin. after 12/31/76.

--P.L. 94-455, Sec. 1906(b)(13)(A), substituted 'Secretary' for 'Secretary or his delegate' in para. (a)(5) and subpara. (b)(4)(B), effective for tax. yrs. begin. after 12/31/76.

--P.L. 94-267, Sec. 1(b)(1), substituted new material for subpara. (a)(4)(A), effective for payments made to an employee on or after 7/4/74, subject Sec. (d) of the Act (reproduced following Code Sec. 402).

Prior to amendment, subpara. (a)(4)(A) read as follows:

"(A) the balance to the credit of an employee is paid to him in one or more distributions which constitute a lump sum distribution within the meaning of section 402(e)(4)(A) determined without reference to section 402(e)(4)(B),"

--P.L. 94-267, Sec. 1(b)(2), substituted 'a payment' for 'the lump-sum distribution' in the last sentence of para. (a)(4) . . . Sec. 1(b)(3), added para. (a)(5), effective for payments made to an employee on or after 7/4/74.

In 1974, P.L. 93-406, Sec. 2005(b)(2), amended that portion of para. (2) which followed clause (ii) of subpara. (A), effective for distributions or payments made after 12/31/73, in tax. yrs. begin. after such date.

Prior to amendment, this material read as follows:

"(iii) the total amounts payable by reason of an employee's death or other separation from the service, or by reason of the death of an employee after the employee's separation from the service, are paid to the payee within one taxable year of the payee,

then the amount of such payments, to the extent exceeding the amount contributed by the employee (determined by applying section 72(f)), which employee contributions shall be reduced by any amounts theretofore paid to him which were not includible in gross income, shall be considered a gain from the sale or exchange of a capital asset held for more than 6 months. This subparagraph shall not apply to amounts paid to any payee to the extent such amounts are attributable to contributions made on behalf of the employee while he was an employee within the meaning of section 401(c)(1).

"(B) Definition. For purposes of subparagraph (A), the term 'total amounts' means the balance to the credit of an employee which becomes payable to the payee by reason of the employee's death or other separation from the service, or by reason of his death after separation from the service.

"(C) Limitation on capital gains treatment. Subparagraph (A) shall apply to a payment paid after December 31, 1969, only to the extent it does not exceed the sum of--

"(i) the benefits accrued by the employee on behalf of whom it is paid during plan years beginning before January 1, 1970, and

"(ii) the portion of the benefits accrued by such employee during plan years beginning after December 31, 1969, which the payee establishes does

not consist of the employee's allocable share of employer contributions under the plan under which the annuity contract is purchased.

"The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph."

--P.L. 93-406, Sec. 2002(g)(6), added para. (a)(4), effective on or after 9/2/74 for contributions to an employees' trust described in Code Sec. 401(a) which is exempt from tax under Code Sec. 501(a) or an annuity plan described in Code Sec. 403(a).

--P.L. 93-406, Sec. 2004(c)(4), amended para. (b)(2), effective for yrs. begin. after 12/31/75.

Prior to amendment, para. (b)(2) read as follows:

"(2) Exclusion allowance. For purposes of this subsection, the exclusion allowance for any employee for the taxable year is an amount equal to the excess, if any, of--

"(A) the amount determined by multiplying (i) 20 percent of his includible compensation, by (ii) the number of years of service, over

"(B) the aggregate of the amounts contributed by the employer for annuity contracts and excludable from the gross income of the employee for any prior taxable year."

--P.L. 93-406, Sec. 1022(e), added para. (b)(7), effective 1/1/74.

In 1969, P.L. 91-172, Sec. 321(b)(2), deleted subsecs. (c) and (d) and added new subsec. (c), effective for contributions made and premiums paid after 8/1/69.

Prior to amendment, subsecs. (c) and (d) read as follows:

"(c) Taxability of beneficiary under a nonqualified annuity.

"If an annuity contract purchased by an employer for an employee is not subject to subsection (a) and the employee's rights under the contract are nonforfeitable, except for failure to pay future premiums, the amount contributed by the employer for such annuity contract on or after such rights become nonforfeitable shall be included in the gross income of the employee in the year in which the amount is contributed. The employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities).

"(d) Taxability of beneficiary under certain forfeitable contracts purchased by exempt organizations.

"Notwithstanding the first sentence of subsection (c), if rights of an employee under an annuity contract purchased by an employer which is exempt from tax under section 501(a) or 521(a) change from forfeitable to nonforfeitable rights, the value of such contract on the date of such change (to the extent attributable to amounts contributed by the employer after December 31, 1957) shall, except as provided in subsection (b), be included in the gross income of the employee in the year of such change."

--P.L. 91-172, Sec. 515(a)(2), added subpara. (a)(2)(C), effective for tax. yrs. end. after 12/31/69.

In 1964, P.L. 88-272, Sec. 232(e)(4), deleted 'except that section 72(e)(3) shall not apply' after '(relating to annuities)' in paras. (a)(1), (b)(1) and subsec. (c), effective for tax. yrs. begin. after 12/31/63.

In 1962, P.L. 87-792, Sec. 4, substituted 'described in paragraph (1)' for 'which meets the requirements of section 401(a) (3), (4), (5), and (6)' in clause (a)(2)(A)(i) and added last sentence of subpara. (a)(2)(A); and added para. (a)(3), effective for tax. yrs. begin. after 12/31/62.

In 1961, P.L. 87-370, Sec. 3(a)(1), amended subpara. (b)(1)(A) . . . Sec. 3(a)(2), substituted 'the employer described in paragraph (1)(A),' for 'the employer described in section 501(c)(3) and exempt from tax under section 501(a),' in para. (b)(3) . . . Sec. 3(a)(3), added 'or public school' before the period in the heading of subsec. (b), effective for tax. yrs. begin. after 12/31/57.

Prior to amendment, subpara. (b)(1)(A) read as follows:

"(A) an annuity contract is purchased for an employee by an employer described in section 501(c)(3) which is exempt from tax under section 501(a)."

In 1958, P.L. 85-866, Sec. 23, substituted 'which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section),' for 'with respect to which the employer's contribution is deductible under section 404(a)(2), or if an annuity contract is

purchased for an employee by an employer described in section 501(c)(3) which is exempt from tax under section 501(a)' in subsec. (a)(1); added subsec. (b) and redesignated former subsec. (b) as (c) and, added subsec. (d), for tax. yrs. begin. after '57.

Other provisions:

Modifications of section 403(b); multiple salary reduction agreements permitted; treatment of Indian tribal governments. Act Aug. 20, 1996, P.L. 104-188, Title I, Subtitle D, Ch 2, Subch B, § 1450(a), (b), 110 Stat. 1814, provides:

"(a) Multiple salary reduction agreements permitted.

(1) General rule. For purposes of section 403(b) of the Internal Revenue Code of 1986, the frequency that an employee is permitted to enter into a salary reduction agreement, the salary to which such an agreement may apply, and the ability to revoke such an agreement shall be determined under the rules applicable to cash or deferred elections under section 401(k) of such Code.

"(2) Constructive receipt. Section 402(e)(3) is amended by inserting 'or which is part of a salary reduction agreement under section 403(b)' after 'section 401(k)(2))'.

"(3) Effective date. This subsection shall apply to taxable years beginning after December 31, 1995.

"(b) Treatment of Indian tribal governments.

(1) In general. In the case of any contract purchased in a plan year beginning before January 1, 1995, section 403(b) of the Internal Revenue Code of 1986 shall be applied as if any reference to an employer described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from tax under section 501 of such Code included a reference to an employer which is an Indian tribal government (as defined by section 7701(a)(40) of such Code), a subdivision of an Indian tribal government (determined in accordance with section 7871(d) of such Code), an agency or instrumentality of an Indian tribal government or subdivision thereof, or a corporation chartered under Federal, State, or tribal law which is owned in whole or in part by any of the foregoing.

"(2) Rollovers. Solely for purposes of applying section 403(b)(8) of such Code to a contract to which paragraph (1) applies, a qualified cash or deferred arrangement under section 401(k) of such Code shall be treated as if it were a plan or contract described in clause (ii) of section 403(b)(8)(A) of such Code."

Application of amendment made by § 1450(c) of Act Aug. 20, 1996. Act Aug. 20, 1996, P.L. 104-188, Title I, Subtitle D, Ch 2, Subch B, § 1450(c)(2), 110 Stat. 1815, provides: "The amendment made by this subsection [amending subsec. (b)(1)(E) of this section] shall apply to years beginning after December 31, 1995, except a contract shall not be required to meet any change in any requirement by reason of such amendment before the 90th day after the date of the enactment of this Act."

Application of amendment made by § 1504 of Act Aug. 5, 1997. Act Aug. 5, 1997, P.L. 105-34, Title XV, Subtitle A, § 1504(a)(2), 111 Stat. 1063, provides: "The amendment made by this subsection [amending subsec. (b)(3) of this section] shall apply to years beginning after December 31, 1997."

Clarification of § 1450 of P.L. 104-188. Act Aug. 5, 1997, P.L. 105-34, Title XVI, § 1601(d)(4), 111 Stat. 1089; July 22, 1998, P.L. 105-206, Title VI, § 6016(a)(2), 112 Stat. 822 (effective as if included in the provisions of P.L. 105-34 to which related, pursuant to Sec. 6024, which appears as a note to Code Sec. 1), provides:

"(A) Paragraphs (7)(A)(ii) and (11) of section 403(b) of the Internal Revenue Code of 1986 shall not apply with respect to a distribution from a contract described in section 1450(b)(1) of such Act [§ 1450(b)(1) of Act Aug. 20, 1996, P.L. 104-188 (note to this section)] to the extent that such distribution is not includible in income by reason of--

"(i) in the case of distributions before January 1, 1998, section 403(b)(8) or (b)(10) of such Code (determined after the application of section 1450(b)(2) of such Act [§ 1450(b)(2) of Act Aug. 20, 1996, P.L. 104-188 (note to this section)]), and

"(ii) in the case of distributions on and after such date, such section 403(b)(10).

"(B) This paragraph shall apply as if included in section 1450 of the Small Business Job Protection Act of 1996 [amending this section and appearing in part as notes to this section; for full classification, consult USCS Tables volumes].".

Election to modify § 403(b) exclusion allowance to conform to § 415 modification. Act June 7, 2001, P.L. 107-16, Title VI, Subtitle C, § 632(b)(3), 115 Stat. 115, provides: "In the case of taxable years beginning after December 31, 1999, and before January 1, 2002, a plan may disregard the requirement in the regulations regarding the exclusion allowance under section 403(b)(2) of the Internal Revenue Code of 1986 [26 USCS § 403(b)(2)] that contributions to a defined benefit pension plan be treated as previously excluded amounts for purposes of the exclusion allowance.".

[Sunset of § 632(b)(3) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (note above). Pursuant to § 901(a)(1), (b) of Act June 7, 2001, P.L. 107-16 (26 USCS § 1 note), § 632(b)(3) of such Act (note above) shall not apply to taxable, plan, or limitation years beginning after December 31, 2010, and the Internal Revenue Code of 1986 shall be applied and administered to such years as if the provision had never been enacted.]

Application of amendments made by § 647 of Act June 7, 2001. Act June 7, 2001, P.L. 107-16, Title VI, Subtitle D, § 647(c), 115 Stat. 127, provides: "The amendments made by this section [adding 26 USCS § 403(b)(13) and 457(e)(17)] shall apply to trustee-to-trustee transfers after December 31, 2001.".

#### NOTES:

#### CROSS REFERENCES

Amounts received with respect to annuity as includible in gross income, 26 USCS § 72.

Taxability of beneficiary of employees' trust, 26 USCS § 402.

Definitions and special rules for purposes of minimum survivor annuity requirements, 26 USCS § 417.

Deduction for state tax, amounts received by surviving annuitant under joint and survivor annuity contract, 26 USCS § 691(d).

Basis upon sale of annuity contract, 26 USCS § 1021.

Definition of "annuity," 26 USCS § 401(g).

#### RESEARCH GUIDE

#### Federal Procedure:

5 Fed Proc L Ed, Bankruptcy § 9:357.

20 Fed Proc L Ed, Internal Revenue § § 48:182, 183, 187, 188.

#### Am Jur:

9 Am Jur 2d, Bankruptcy § 1332.

33A Am Jur 2d, Federal Taxation (2000) PP 8156, 8677, 8712, 8764, 8851, 8852, 8857, 8981, 8988, 9026-9028, 9030-9032, 9034.

60A Am Jur 2d, Pensions and Retirement Funds § § 27, 74, 429, 433, 754.

70C Am Jur 2d, Social Security and Medicare § § 174, 495, 498, 500.

#### Annotations:

Distributions to employee from pension or profit-sharing plans as taxable, under § 402 of the 1954 Internal Revenue Code (26 USC § 402), as ordinary income or as capital gain. 3 ALR Fed 719.

Premiums paid by employer for insurance or annuity payable to employee as taxable income of latter. 7 ALR2d 766.

#### Texts:

Rasch, Handling Federal Estate and Gift Taxes 4th § § 2:125, 15:30.

Rothenberg, Tax & Estate Planning for Divorce and Separation § § 8:1-8:17.

Rothenberg, Tax and Estate Planning with Closely Held Corporations § § 11:2, 11:6, 11:9.



Law Review Articles:

Kelsey & Buckheit. Impact of the Tax Reform Act of 1969 on Executive Compensation. 4 *Ind Legal F* 246.

Auster. When to Roll Over a Lump-Sum Distribution from a Qualified Plan. 8 *J Pen Pl & Comp* 468, November, 1982.

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Shillingburg. "B" v. "K" plans: a comparison of broadbased plans under Section 403(b) and Section 401(k) after JOPA, 27 *Stetson L Rev* 529, Fall 1997.

TEFRA's Impact on Pension Plans. 17 *Tax Notes* 803, December 13, 1982.